



11-14-07

JAC
(1)**CERTIFICATE OF MAILING**

I hereby certify that this correspondence and attached documents for Application Serial No. 10/786,459, are being deposited as "Express Mail" with the United States Postal Service in an envelope addressed to: MAIL STOP PETITIONS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Express Mail Label EB525595794US on:

Date:

November 13, 2007

By:

Signature of person depositing Documents
Laura E. Hartman

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

Application No.	:	10/786,459	Confirmation No.	9338
Applicant	:	Wayne A. Lundeborg		
Filed	:	February 25, 2004		
TC/A.U.	:	3753		
Examiner	:	Craig James Price		
Docket No.	:	6079.102US		
Customer No.	:	N/A		

TRANSMITTAL OF PETITION AND ISSUE FEE

MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

Petition to withdraw holding of abandonment. Undersigned recently received the attached notice of abandonment in this application, for failure to respond to a Notice of Allowance with a noted mailing date of May 16, 2007. Undersigned states that undersigned's office never received the Notice of Allowance and under the provisions of 37 CFR 1.137(a), and the authority of Delgar v Schulyer, referenced at MPEP section 711.03(c), undersigned respectfully petitions that the holding of abandonment be withdrawn as unavoidable. Accompanying this petition is a completed notice of allowance, and a payment of the issue fee required in the Notice of Allowance (including the new issue fee as of Oct 1, 2007). Moreover, the required petition fee is also attached.

11/15/2007 EFLORES1 00000049 10786459
01 FC:2452

255.00 OP

Basis for Petition to withdraw holding of abandonment as unavoidable. The undersigned states that the Notice of Allowance showing a mailing date of May 16, 2007 was not received by the undersigned's office. A search of the file jacket of the above identified application and the docket records of the undersigned's office indicates that the Notice of Allowance was not received. A copy of the docket record of the undersigned's office where the non received Notice of Allowance would have been shown as docketed is attached. Specifically, had the Notice of Allowance been received and docketed, the undersigned's docket would have shown payment of the issue fee as due by August 16, 2007. The attached docket of the undersigned's office is for the time period of July 2, 2007 – September 29, 2007, and shows no entry of anything relating to the above identified application due August 16, 2007. (The undersigned's client/record number for the above identified application is 6079.102US, and while certain docket information has been redacted to protect confidentiality of other clients, the client/file numbers for the matters docketed for the time period of July 2, 2007 – September 29, 2007, are shown, so that the Commissioner can see that the above identified application was never docketed for payment of the issue fee.)

As further evidence that the notice of allowance was never received, undersigned attaches a copy of the undersigned's interview summary record, filed in this application on June 15, 2007, a full month after the noted mailing date on the Notice of Allowance. In the undersigned's interview summary record, undersigned stated, *inter alia*,

“The only response received by the undersigned is the interview summary record, and because there is no outstanding office action for applicant to respond to (and in light of the time limit stated in the interview summary record) undersigned felt it appropriate to amplify the communications leading up to the interview summary record, and also request clarification of the position stated by the examiner in the interview summary record”(boldface added)

and it is respectfully submitted this is further evidence that the Notice of Allowance was never received by the undersigned's office.

For the foregoing reasons, undersigned respectfully requests that the notice of abandonment be withdrawn as unavoidable, and this application passed to issue.

Contingent Petition to Revive as unintentional. While undersigned believes that the circumstances regarding the abandonment of this application justify the withdrawal of the holding of abandonment as unavoidable, applicant further requests that in the event this petition is not granted, that the holding of abandonment be withdrawn as unintentional. Therefore, a contingent petition to revive this application as unintentionally abandoned is attached.

Petition Fees. Undersigned has attached a credit card payment for the issue fee and the petition to withdraw holding of abandonment as unavoidable. In the event the contingent petition is required to get this application revived, it is respectfully requested that any additional fees for that petition, or any other fees required in connection with this filing, be charged to the undersigned's Deposit Account Number 50-1905. A duplicate of this document is attached.

Favorable action is respectfully requested.

Respectfully Submitted,

By: 
Lawrence R. Oremland, Reg. No. 27,046

Enclosures

Lawrence R. Oremland, P.C.
5055 E. Broadway Blvd., Suite C-214
Tucson, AZ 85711
Phone: (520) 747-0999
Fax: (520) 747-0799
Email: larry@oremland.com



CONTINGENT PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT

Docket Number (Optional)

ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(B)

6079.102US

First named inventor: Wayne A. Lundeberg

Application No.: 10/786,459

Art Unit: 3753

Filed: February 25, 2004

Examiner: Craig James Price

Title: Barrier Device for Fluid System Cover

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Contingent Petition to Revive as unintentional. This contingent petition accompanies a petition to withdraw the holding of abandonment of this application as unavoidable. While undersigned believes that the circumstances regarding the abandonment of this application justify the withdrawal of the holding of abandonment as unavoidable, applicant submits this contingent petition so that in the event the petition to withdraw the holding of abandonment as unavoidable is not granted, this contingent petition requests that the holding of abandonment be withdrawn as unintentional.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ \$770.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
(See accompanying Petition regarding payment.)

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____ (identify type of reply):

- ☐ has been filed previously on _____
☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \$1,020.00

- ☐ has been paid previously on _____
☒ is enclosed herewith.

11/15/2007 EFLORES1 00000050 501905 1076459

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770.00 DA

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Lawrence R. Oremland
Signature

11/12/07
Date

Lawrence R. Oremland
Typed or printed name

27,046
Registration Number, if applicable

5055 E. Broadway Blvd., Suite C-214, Tucson, AZ 85711
Address

520-747-0999
Telephone Number

Address

Enclosures: ☒ Fee Payment☐ Reply☐ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☒ Other: Issue and Publication Fees**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as Express mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. Express Mail Label No. EB525595794US

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

November 13, 2007
Date

Laura E. Hartman
Signature

Laura E. Hartman

Typed or printed name of person signing certificate

The U.S. Patent and Trademark Office Official Mail Room Stamp affixed hereto acknowledges receipt of the following items:

1. Response to Interview Summary (5 pages);
2. Certificate of Mailing; and
3. Return postcard.

The above referenced documents have been sent via First Class Mail to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date stated below.

Serial No.: 10/786,459
Title: Barrier Device for Fluid System Cover
Applicant: Wayne A. Lundeborg
Docket No.: 6079.102US
Date Mailed: June 15, 2007

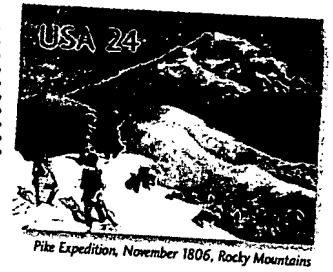
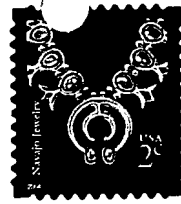
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Serial No.: 10/786,459
Title: Barrier Device for Fluid System Cover
Applicant: Wayne A. Lundeborg
Docket No.: 6079.102US
Date Mailed: June 15, 2007





Lawrence R. Oremland, P.C.
5055 E. Broadway Blvd., Suite C-214
Tucson, Arizona 85711

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

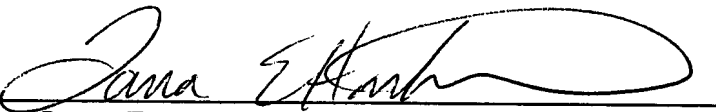
DATE: June 15, 2007

I hereby certify that the enclosed documents for application Serial No.: 10/786,459, Entitled: Barrier Device for Fluid System Cover, are being deposited as "First Class Mail" on this date with the United States Postal Service in an envelope addressed to:

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Documents Enclosed Include:

1. Response to Interview Summary (5 pages);
2. Certificate of Mailing; and
3. Return postcard.

By: 
Laura E. Hartman

Signature of person depositing above mentioned documents

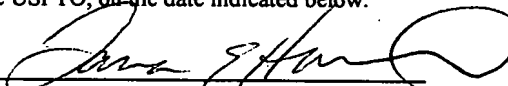
Certificate of Mailing or Transmission

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO, on the date indicated below.

Date: _____

June 15, 2007

By: _____



Signature of person depositing Documents
Laura E. Hartman

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. :	10/786,459	Confirmation No. 9338
Applicant :	Wayne A. Lundeborg	
Filed :	February 25, 2004	
TC/A.U. :	3753	
Examiner :	Craig James Price	
Docket No. :	6079.102US	
Customer No. :	N/A	

Mail Stop Amendment
Commissioner for Patents
P.O. Box 14560
Alexandria, VA 22313-1450

Applicant's Response to Interview Summary

Sir:

In response to the Interview Summary of May 16, 2007, undersigned respectfully submits that the interview summary in the paper mailed May 16, 2007, requires amplification by the undersigned, and requests clarification of what course the patent and trademark office intends to take in this application.

Events leading to the May 4, 2007 Interview

Prior to the May 4, 2007 phone conference with examiner Keasel that is set forth in the interview summary, undersigned had 3 phone discussions with examiner Price, on May 1st, 2nd and 3rd, all initiated by examiner Price.

May 1, phone conference. In the May 1 discussion, examiner Price started by asking if undersigned would approve deleting the phrase "utility system" from claim 29 by examiner's amendment. Undersigned was more interested in the examiner's position

regarding claims 31 and 32, and without responding to the examiner's request, asked as to the position of the examiner regarding claims 31 and 32. Examiner Price stated that claim 31 was directed to the non elected species, on account of the language referenced in the interview summary record. Undersigned stated that he believed claim 31 was generic, and then asked about claim 32, which is dependent on claim 31, and is clearly intended to read on the elected species. Examiner Price stated that because claim 31 was being held directed to the non elected species, that claim 32 was therefore considered directed to the non elected species. Undersigned stated his disagreement with that position, and offered to present language in claim 31 that would make that claim clearly generic (as intended), or if necessary to add language from claim 32 to claim 31 to make the claim clearly read on the elected species. Undersigned stated his belief that the subject matter of claims 31 and 32 was clearly patentably distinct from the cited references. Examiner Price first stated that he felt the Jacob patent, which had been relied upon in the initial office action, met claim 31, but when undersigned explained how the language of claim 31 and 32 was intended to clearly define over Jacob, it was undersigned's impression that examiner Price felt there was merit to the applicant's position, and said he would review the manner with his supervisor.

May 2, 2007 phone conference. Examiner Price called again on May 2, 2007. He restated the position that claim 31 was directed to a non elected species, that claim 32 was directed to the non elected species because it was dependent on claim 31, that the patent office would not entertain a revision of claim 31 along the lines suggested on May 1 by the undersigned (to make the claim clearly generic). When undersigned asked what the examiner proposed to do with the case, examiner Price stated that the patent and trademark office was going to cancel claims 31 and 32, and pass the case to issue. Undersigned said that would amount to making a holding that the claims were withdrawn as not directed to an elected species, and then simultaneously canceling those claims, without giving applicant an opportunity to challenge the holding, and that undersigned was not aware of the authority for doing that. Examiner Price said he would review the matter with his supervisor, and get back to the undersigned.

May 3, 2007 phone conference. Examiner Price called again on May 3, 2007. He stated that after reviewing the matter with his supervisor, Examiner Keasel, they were maintaining their position that they could hold claims 31 and 32 as directed to a non elected species, simultaneously cancel the claims and issue the case. He also stated that they were not going to entertain any further discussion. Undersigned expressed his disappointment with that position.

May 4, 2007 phone conference with Examiner Keasel. On May 4, 2007, undersigned tried to call examiner Price, because undersigned believed he had never given approval for the revision to claim 29 that was requested by the examiner in the May 1, 2007 conference, and wanted to inquire as to how the patent and trademark office was prepared to handle that issue. Examiner's voice mail recording indicated that he was out of town that day, so undersigned called Examiner Keasel. Examiner Keasel repeated the position stated in the interview summary record, and undersigned summarized what he believed he had been told by Examiner Price, and asked for the authority that would enable the patent and trademark office to simultaneously hold claims directed to a non elected species as withdrawn and also cancel them, without issuing some sort of office action that would give the applicant a chance to challenge the holding. Examiner Keasel stated that a notice of allowance could be challenged by petition, and undersigned stated he thought applicant should at least be entitled to an office action such as a Quayle action that would give the applicant an opportunity to petition before a notice of allowance was issued, but examiner Keasel maintained his position. Then undersigned noted that he believed he had never given authority to amend claim 29 in the way first proposed by examiner Price, and explained that as soon as examiner Price made the proposal regarding claim 29, undersigned moved the discussion to claims 31 and 32, since they were more important to the applicant, so undersigned believed he had never responded (either way) to the examiner's proposal regarding claim 29. Examiner Keasel stated he had been advised by examiner Price that undersigned had agreed to the proposed amendment of claim 29, and undersigned restated then, and restates now, that he does not believe he ever responded to the examiner's request concerning claim 29. In addition, undersigned asked examiner Keasel to consider the following further point; in

determining whether claim 31 deserves to be acted on substantively: in the original response to the restriction requirement, applicant was required to identify those claims that read on the elected species. In its response, applicant stated its belief that original claims 1-9 were generic, and that 8 included language (boldfaced below) that is very close to the language upon which the examiners are now basing their holding that claim 31 is limited to the non elected species.

8. A barrier device as defined in claim 7, **wherein the stem includes at least one coupling portion which has a coupling position in which it is aligned with the underside of a water meter cover and resists separation of the device from a water meter cover**, and wherein the stem has a flexibility that enables the coupling portion to flex as the stem is passing through a tool access opening and to be returned to the coupling position when the coupling portion has passed through the tool access opening.

Importantly, the examiners did not challenge the applicant's position that claim 8 was generic, did not hold claim 8 withdrawn, but in fact acted on claim 8 in the original office action on the merits. Thus, undersigned asked examiner Keasel to review original claim 8, and consider the proposal undersigned had originally made to present language in claim 31 that would clearly make the claim generic.

Discussion and Request for Clarification.

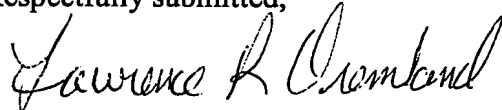
The only response received by the undersigned is the interview summary record, and because there is no outstanding office action for applicant to respond to (and in light of the time limit stated in the interview summary record) undersigned felt it appropriate to amplify the communications leading up to the interview summary record, and also request clarification of the position stated by the examiner in the interview summary record. Specifically, the interview summary record points to the language of claim 31 that undersigned believes is substantively similar to the language of claim 8 that is boldfaced above, and notes that the examiner's never challenged applicant's statement

that claim 8 was generic, and in fact acted on claim 8 (see e.g. paragraphs 6 and 9 of office action dated Nov 3, 2006, and particularly the manner in which the language of claim 8 that is boldfaced above was addressed). Moreover, the interview summary record states that all claims that are held as not being directed to the non elected species are withdrawn in accordance with 37 CFR 1.142(b), but that is different from the statement of examiner Price that claims were being simultaneously held as withdrawn and also canceled, as directed to a non elected species. Moreover, it is not clear to the undersigned as to whether the patent and trademark office intends to take such an action (and if so undersigned cannot find support for such an action in 37 CFR 1.142) or whether the patent and trademark office intends to issue a further office action that offers the applicant an opportunity to challenge the holding of withdrawal of claims 31 and 32, if applicant feels that is appropriate. Finally, there is nothing in the interview summary record as to how the examiners propose to handle the issues discussed above with respect to claim 29, and clarification of that issue is respectfully requested.

Thus, clarification of the position of the patent and trademark office, and a statement of how the patent and trademark office intends to proceed in this case, going forward is respectfully requested.

In the event the examiners feels a further telephone discussion would be useful in moving prosecution of this case forward, the examiners are respectfully requested to contact the undersigned at 520-747-0999.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence R. Oremland". The signature is fluid and cursive, with the first name being the most prominent.

Lawrence R. Oremland
Reg. No. 27,046
Attorney for Applicant

Case Tracking System Reminder List

Date: August 13, 2007

Date Due	Who	What	Case No	Inventor	Case Title
7/2/2007	LEH	Section 8 - USA - Send Client Reminder	6051.103US		
7/2/2007	LEH	Section 15 - USA - Send Client Reminder	6051.103US		
7/9/2007	LEH	Send Client Reminder U.S. Patent Maintenance Due 11.5 Years	6004.109US		
7/9/2007	LRO	Information Disclosure Statement	6220.102US		
7/16/2007	LRO	Information Disclosure Statement	6117.102US		
7/30/2007	LRO	Information Disclosure Statement	6084.102DIV		
7/30/2007	LRO	Information Disclosure Statement	6223.102US		
8/3/2007	LRO	Respond to Office Action - USA	6009.102US		
8/11/2007	LRO	File Regular Application	6206.102P		
8/11/2007	LRO	Foreign Filing	6206.102P		
8/20/2007	LRO	File Office Action Response - USA	6098.102US		
8/20/2007	LRO	File Statement of Use	6181.102US		
8/20/2007	LRO	Statement of Use Extension	6181.102US		
8/22/2007	LRO	7.5 Year Maintenance Fee - USA	6071.106US		
8/23/2007	LEH	Send Client Reminder U.S. Patent Maintenance Due 7.5 Years	6071.112CIP		
8/27/2007	LEH	Section 8 - USA - Send Client Reminder	6004.104US		
8/27/2007	LEH	Section 15 - USA - Send Client Reminder	6004.104US		
9/10/2007	LRO	Information Disclosure Statement	6215.102US		
9/13/2007	LEH	Send Client Reminder U.S. Patent Maintenance Due 7.5 Years	6071.114US		
9/17/2007	LRO	3.5 Year Maintenance Fee - USA	6029.102DIV		
9/17/2007	LRO	Respond to Final Office Action - USA	6083.102US		
9/20/2007	LRO	Last Date To File Office Action Response - USA	6098.102US		
9/21/2007	LRO	7.5 Year Maintenance Fee - USA	6029.103US		
9/23/2007	LRO	7.5 Year Maintenance Fee - USA	6029.105US		
9/26/2007		File Statement of Use	6014.109US		
9/26/2007		Statement of Use Extension	6014.109US		
9/26/2007	LRO	Respond to Final Office Action - USA	6150.102US		
9/27/2007	LRO	Foreign Filing	6169.106US		
9/27/2007	LRO	File response to missing parts - USA	6186.102CON		
9/27/2007	LRO	Issue Fee	6201.108US		
9/29/2007	LRO	Foreign Filing	6217.102US		